Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO: 1321 OF 2003 (M/S)

Raj Pal Singh,
S/o- Shri Data Ram
R/o- Village Dhallawala,
Post Office Chandrapur Kalan,
District Haridwar.

---------- Petitioner.

Versus

1. Commissioner,
   Garhwal Division,
   Pauri Garhwal,
   Camp at Dehradun.

2. Sub Divisional Magistrate,
   Laksar, District Haridwar.

3. Gaon Sabha Kuankheda,
   Tehsil Laksar, District Haridwar
   Through its Pradhan.

4. District Supply Officer,
   Haridwar.

5. State of Uttaranchal through
   Collector, Haridwar.

---------- Respondents.

Mr. Lok Pal Singh Learned counsel for the Petitioner
Learned S.C. for the respondents.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved Under Article-226 of Constitution of India, the petitioner has challenged impugned orders dated 13.5.2002, 22.7.2002 and 27.11.2003 passed by District Supply Officer, Haridwar and Commissioner, Garhwal Division, whereby the petitioner's

licence to run fair price shop was suspended and cancelled, and the appeal is rejected.

2) Brief facts of the case, as narrated in the writ petition, are that the petitioner was selected by Gaon Sabha-Kuankheda for the purpose of running fair price shop at Dallawala. Accordingly he was granted licence by the concerned authorities and is running the fair price shop since 1996. However, respondent no.2 issued a show cause notice dated 13.5.2002 to the petitioner asking his reply on complaint of the villagers regarding alleged irregularities in distribution of the ration. Simultaneously the licence of the petitioner was suspended by said show cause notice (copy annexure no.1 to writ petition). In response to the notice, petitioner submitted his explanation (copy annexure no.2 to writ petition) to the authority concerned. The respondent no.4, allegedly without giving petitioner further opportunity of being heard, vide its order dated 22.7.2002 (copy annexure no.3 to writ petition) cancelled the licnece of the petitioner to run the fair price shop. Aggrieved by which the petitioner preferred Misc. Appeal No:31 of 2001-02 before respondent no.1 but the same was also rejected vide order dated 27.11.2003. Hence this writ petition on the ground that the petitioner's licence is cancelled in a arbitrary manner, without affording him proper opportunity of being heard, and without application of mind on the part of the respondent authorities.

3) A counter affidavit has been filed on behalf of the respondent nos. 1,2,4 & 5 whereby the District Supply Officer has admitted that a show cause notice dated 13.5.2002 was issued against the petitioner as to why his

licence to run fair price shop be not cancelled. It is stated by the deponent (District Supply Officer) that on the complaint received against the petitioner, inquiry was got made vide order dated 12.6.2002, through Supply Inspector, Khanpur. It is further stated in the counter affidavit that the Supply Inspector submitted his report dated 10.7.2002 and the irregularities were found committed by the petitioner a-part from being of rude behavior. Defending the cancellation of the licence of petitioner and rejection of appeal it is stated in the counter affidavit that the grounds mentioned in the writ petition challenging the impugned order are misconceived.

4) I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit alongwith the annexures annexed thereto.

5) The short question for consideration being before this court is whether the licnece of the petitioner to run fair price shop was cancelled without giving him proper opportunity of being heard to him or if the cancellation was done arbitrarily.

6) Admittedly the petitioner was holding licnece to run a fair price shop in village-Kuankheda in District Haridwar. It is also not disputed that his licence was cancelled vide order dated 22.7.2002 and appeal against said order was rejected vide order dated 27.11.2003. It is also not denied that before cancellation of shop show cause notice dated 13.5.2002 was issued to the petitioner in response to which he submitted his explanation. This court has to see if the opportunity of being heard was not proper or if the licence was cancelled arbitrarily.

7) A copy of the complaint (dated-09.7.2002) of the villagers is annexed as annexure no. C.A.2 to the counter affidavit from which it appears that during inquiry by Supply Inspector as many as 36 villagers complained about the irregularities committed by the petitioner in distribution of the ration. It is also mentioned that in many cases he used to with hold ration card with him. Copy of the show cause notice dated 13.5.2002 by which the petitioner was required to explain why his licence be not cancelled contains following twelve specific irregularities allegedly committed by the petitioner :-

(i) *No entry was found to have been made regarding the supply of Sugar/Kerosence Oil in the APL Card No. 179854, 179855, 179856 and 179857 from January 2002 to April 2002.*

(ii) *No entry was found to have been made in APL Card No. 116109, from September 2000 till date.*

(iii) *No entry was found to have been made in APL Card No.116354 since August 2001.*

(iv) *No entry was found to have been made in APL Card No. 116352.*

(v) *No entry was found to have been made in APL Card No. 116352 since February 2002.*

(vi) *No entry was found relating to supply of ratio in APL Card No. 116350 since August 2000.*

(vii) *No entry was found to have been made in APL Card No. 116340 from April 99 to December 2001.*

(viii) *No entry was found to have been made in APL Card No. 179884.*

(ix) *No entry was found to have been made in BPL Card No.12843 since March 2002.*

(x) *No entry was found to supply of rashan have been made in BPL Card No. 12874 since February 2002.*

(xi) *At the spot, before the Supply Inspector, as many as 28 card holders complained of irregular distribution of ration by the petitioner and the rate charged from them was alleged to – be sugar @ Rs. 14.50/= per Kg., Kerosene oil @ Rs. 10.50/= per litre, BPL white Rs. 6.00/= per Kg. which is higher than the rate prescribed by the Government.*

(xii) *Also, at the time of inspection it was found that the petitioner did not mention the rates in the register of the item supply to the card holder.*

Above mentioned specific allegation were admittedly brought to the notice of the petitioner at time of suspending his licence and his reply was sought before cancellation.

As such it can not be said if the petitioner was not given proper opportunity of being heard. On perusal of record read with the report (dated 10.7.2002) of Supply Inspector which is annexed as C.A.1 to the counter affidavit, the decision of cancellation of licence taken on 22.7.2002 can not be said to be arbitrary. Impugned order dated 22.7.2202 (copy annexure no.3 to writ petition) shows that detailed and reasoned order is passed by the District Supply Officer for cancellation of licence of the petitioner. Perusal of the order dated 22.11.2003 passed by the respondent no.1 shows that the petitioner's counsel was heard before the appeal was rejected in the matter.

8) Therefore, in view of the above discussion, this Court is of the view that neither arbitrariness is found nor is there any illegality in the impugned order, nor is their any substance in the allegations that the petitioner was not given proper opportunity of being heard. Therefore, writ petition, being devoid of merits is dismissed accordingly. No order as to costs.

(Prafulla C. Pant, J.)

Dated: December 15, 2004
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